



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced: **02/24/06**

Bill No: **SB 1607**

Tax: **Property**

Author: **Machado**

Related Bills:

BILL SUMMARY

This Board of Equalization (Board) sponsored bill would:

- Allow base year value transfers to be granted on a prospective basis if a claim is filed after the designated filing period. §69.5
- Make a technical correction substituting the term “claimant” for “transferee” related to the issue of persons authorized to receive copies of otherwise confidential base year value transfer claim forms. §69.5
- Modify the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use their property to hold weekly meetings without jeopardizing the property tax exempt status of the property. The meeting holder user would only need to provide a valid tax exemption letter. §214
- Include governmental entities as qualifying members of a limited liability company, consistent with Property Tax Rule 136, and insert and move the phrase "limited liability companies" in various locations in Section 214 to correct omissions and misplacement of the phrase. §214 and §214.8
- Remove special purpose provisions related to the homeowners' exemption and specific disasters included in Section 218 and instead create a new stand alone section making these provisions standard for all Governor declared disasters. §218 and §218.05
- Codify current administrative practice related to the retention of the homeowners' exemption on homes partially damaged in a disaster. §218.05
- Expressly provide that the Board review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements. §254.5 and §254.6
- Change the deadline for filing an appeal with the Board on publicly owned taxable property (“Section 11 appeal”) from the “Third Monday in July” to “July 20.” §1840

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

This bill also includes a non-Board sponsored provision to:

- Modify Legislative Intent language related to the step transaction doctrine and the parent-child change in ownership exclusion to expressly provide that it also extends to transfers eligible for the grandparent-grandchild exclusion. *Uncodified: Section 2 of Chapter 48 of the Statutes of 1987 (Relating to §63.1)*

ANALYSIS

<p>Prospective Base Year Transfers: Late Filed Claims for Propositions 60/90/110 Revenue & Taxation Code Section 69.5</p>
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Current Law

Under existing property tax law, real property is reassessed to its current fair market value only when there is a “change in ownership.” (Article XIII A, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7)

Relevant to this bill, voters have approved three constitutional amendments permitting a person to “transfer” his or her Proposition 13 base year value from one residence to another. A “base year value transfer” allows eligible homeowners to preserve their Proposition 13 protected value of their prior residence by transferring it to the new residence. This essentially allows a homeowner who qualifies to continue to pay the same basic amount of property taxes. Otherwise, the property taxes on the new residence would be based on its current fair market value, which is usually the sales price, because of the change in ownership.

- Proposition 60, approved by the voters on November 6, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county.
- Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county under limited conditions.
- Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Revenue and Taxation Code Section 69.5 provides the statutory implementation for Propositions 60, 90 and 110. It details the provisions by which persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a newly acquired replacement residence. This property tax relief is generally allowed only once in a lifetime.

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Relevant to this bill, to receive the base year value transfer, Section 69.5 requires the taxpayer to file a claim form with the assessor within three years of the date the replacement residence is acquired.

Proposed Law

This bill would add subdivision (o) to Section 69.5 of the Revenue and Taxation Code to allow the assessor to grant, on a prospective basis, a base year value transfer with respect to property to which a transfer of base year value was available, but for which a timely claim was not filed.

For transfers of base year value that were not timely claimed, the effective date of the base year value transfer would be the lien date following the assessment year in which the claim is filed. For example, any late filed claim in 2007 would be first effective for the January 1, 2008 lien date which in turn is associated with the 2008-09 fiscal year tax bill.

There will be no refund or cancellation of taxes that accrued prior to the prospective application of the base year value transfer.

For any claim that was not timely filed prior to January 1, 2007, the claimant may refile a claim with the assessor.

In General

Property Tax System. California's system of property taxation under Article XIII A of the State Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value."

Base Year Value Transfers. Relevant to this bill, voters have approved three constitutional amendments permitting a person to "transfer" his or her Proposition 13 base year value from one property to another property, thereby avoiding reappraisal of the newly acquired property to its fair market value.

Prop.	Election	Base Year Value Transfers	R&T Code
60	November 6, 1986	Persons Over 55 - Intracounty	§69.5
90	November 8, 1988	Persons Over 55 - Intercounty	§69.5
110	June 5, 1990	Disabled Persons	§69.5

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Comments

1. **Sponsor and purpose.** This provision is sponsored by the Board to address a recommendation made by the Property Taxpayers' Rights Advocate in the 2002 Annual Report and Hearing before the Board. Its purpose is to ensure that taxpayers are not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement.
2. **Prospective Application.** If a claim is made after the customary three year filing period, then the base year value transfer will be granted on the next lien date after the claim form is filed (i.e. property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).
3. **Statutory Requirement.** Base year value transfers were authorized via constitutional amendment by the voters of California (Propositions 60, 90 and 110). The three year period to file a claim is a statutory requirement and no such requirement exists in the Constitution.
4. **The parent-child change in ownership exclusion has allowed prospective relief since 1998.** Allowing prospective relief is consistent with the direction the Legislature took with the parent-child exclusion in 1997 (SB 542, Ch. 941). This was also a Board sponsored provision resulting from a Taxpayers' Rights Advocate recommendation.
5. **Impact on Transfers Occurring Previous to this Measure.** This bill would apply to all transfers that occurred since the effective date of the respective base year value provisions (i.e., Proposition 60, 90, or 110). Thus, persons previously denied the base year value transfer due to a late filed claim (or who never filed) may refile a claim and receive the transfer on a prospective basis.
6. **Technical Correction.** In 2005, the Board sponsored changes to Section 63.1 (parent-child exclusion) and Section 69.5 to ensure that claims are not public documents since they contain personal information such as home addresses and social security numbers. (SB 555.) The original proposal was modified to address concerns raised by the Trusts and Estates Law Section of the State Bar of California to ensure that specified persons would have access to needed information contained in the claim forms. The State Bar Section was concerned that the bill, as introduced, would have prevented claimants and their legal representatives from gaining access to their own claim forms. The amendments made to address these concerns inadvertently used the same language for both Section 69.5 and Section 63.1 which is technically inaccurate. Section 63.1 relates to "transferees" and "transferors", but Section 69.5 should refer to "claimants." This provision corrects this language.

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Welfare Exemption

Revenue and Taxation Code Sections 214 and 214.8

Current Law

Charitable Use - Meetings Held by Other Nonprofits. In 2003 legislation was enacted to improve the joint administration of the welfare exemption by the Board and local county assessors. To eliminate the prior duplication of effort, duties were separated between the functions of organization eligibility, which is determined by the Board, and qualifying uses of property, which is determined by the assessor. In addition, it simplified the welfare exemption filing process by reducing the amount of paperwork nonprofits file annually, especially for those owning property in multiple counties. Nonprofit organizations that own property now apply to the Board for an “organizational clearance certificate” which is granted if the nonprofit meets the organizational requirements for the welfare exemption. This certificate is filed with the assessor of the county where the property is located and indicates the organization is eligible for the exemption provided it uses the property for qualifying purposes. Previously, a variety of documents such as articles of incorporation, financial statements, and tax exemption letters were required to be filed in duplicate in every county where the nonprofit owned property.

Relevant to this bill, the law generally allows a nonprofit organization that owns property receiving the welfare exemption to allow *other* nonprofit organizations (those exempt under either 501(c)(3) or 501(c)(4) of the Internal Revenue Code) to use their facilities to hold meetings no more than once per week without jeopardizing the tax exempt status of the property. The streamlining legislation inadvertently changed the documentation related to the use of a property for weekly meeting purposes by other nonprofit organizations to the organizational clearance certificate. Previously, only a copy of a valid tax exemption letter from the meeting holder was necessary.

Limited Liability Companies. Beginning January 1, 2005, the law allows property owned by a limited liability company (LLC) in which the members are qualifying organizations to qualify for the welfare exemption. Property Tax Rule 136, also effective January 1, 2005, provides that a governmental entity can be a qualifying member of a LLC.

Proposed Law

Charitable Use - Meetings Held by Other Nonprofits. This bill would amend Section 214 (a)(3)(D) to reinstate the documentation needed when a nonprofit organization receiving the welfare exemption allows other qualifying nonprofit groups to use their property to hold weekly meetings without jeopardizing their tax exempt status. This bill would require that a copy of a valid tax exemption letter be provided rather than a copy of an organizational clearance certificate.

In addition, this bill reverses an unintentional substantive amendment to Section 214 by an annual maintenance of the code bill. SB 662 (Stats. 2001, Ch. 159, Judiciary

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Committee), the maintenance of the code bill for 2001, substituted the word “of” for “or” in the last sentence of subparagraph (D) of paragraph (3) of subdivision (a) of Section 214.

Limited Liability Companies - Government Entities. This bill would amend Section 214.8 to include governmental entities as qualifying members of a LLC, consistent with Property Tax Rule 136. This bill would also insert and move the phrase "limited liability companies" in various locations in Section 214 to correct omissions and misplacement of the phrase.

Background

Charitable Use - Meetings Held by Other Nonprofits. AB 3022 (Stats. 1990, Ch. 161, Klehs) added subparagraph (D) to paragraph (3) of subdivision (a) to Section 214 to allow weekly meetings held by 501(c)(3) and (c)(4) tax exempt organizations to be an acceptable use of property receiving the welfare exemption.

Streamlining Welfare Exemption Administration. SB 1062 (Stats. 2003, Ch. 471, SR&T Committee) amended statutory provisions relating to the welfare exemption to streamline the administration of the exemption by eliminating duplicative review functions performed by the assessors and the Board. These changes were effective on January 1, 2004.

Limited Liability Companies. AB 3073 (Stats. 2004, Ch. 354, SR&T Committee) amended statutory provisions relating to the welfare exemption to allow an exemption to qualifying LLCs and their properties. Revenue and Taxation Code Section Code 214 (k) specified that the Board adopt a regulation to specify the ownership, organizational, and operational requirements for LLCs. The Board adopted [Property Tax Rule 136](#) effective January 1, 2005. It specifies that a governmental entity is a qualifying member of a LLC for purposes of qualifying for the welfare exemption. It reads, in pertinent part:

(b)(2) QUALIFYING ORGANIZATION. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities under subdivision (d). A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other members are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code.

Comments

1. **Sponsor and Purpose.** The Board is sponsoring this provision as a housekeeping measure to correct technical deficiencies in existing law.

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2. **Allowing other nonprofits to use a facility to hold weekly meetings is an acceptable charitable use of a property receiving the welfare exemption.** Requiring the meeting holder to provide an “organizational clearance certificate” was an unintended drafting error in the streamlining legislation of 2003. If followed, it would create additional paperwork filing requirements on a nonprofit that does not own property but instead only uses a property owned by another nonprofit that does hold an organizational clearance certificate. Additionally, 501(c)(4) tax exempt organizations are not able to obtain an organizational clearance certificate since only 501(c)(3) tax exempt organizations are eligible. This bill is consistent with prior statutory requirements and current administrative practice.
3. **Technical amendment to reverse an annual maintenance of the code amendment that substituted the word “of” for “or”.** This bill reverses an unintentional substantive amendment to Section 214 by SB 662 (Stats. 2001, Ch. 159, Judiciary Committee), the annual maintenance of the code bill for 2001. Related to providing a copy of a valid tax exemption letter for weekly meeting holders to the assessor, the law previously provided that: “The owner *or* the other organization shall also file with the assessor...” and now it reads “The owner *of* the other organization shall file with the assessor...”. Usually, there is little or no direct contact between the assessor and a meeting holder (i.e., “the other organization”) because they are not required to file an annual welfare exemption claim. In reviewing the claim filed by the nonprofit owner of the property, the assessor verifies that the property is used exclusively for charitable purposes and it is in this connection that a tax exempt letter from the meeting holder may be required. The tax exempt letter could be obtained from *either* the meeting holder or the property owner – who likely requires a copy of the letter for its files as a condition of allowing the use of their property for meetings so it can protect its tax exempt status.
4. **A government entity can be a member of an LLC for purposes of qualifying for the welfare exemption.** In developing Property Tax Rule 136 it was found that some local governments have entered into joint ventures with nonprofit organizations to own and operate property. Each member of the LLC, the local government and the nonprofit, is eligible for a property tax exemption if they own the subject property separately, either as government owned property or welfare exemption property, respectively. Property Tax Rule 136 was drafted to expressly recognize these joint ventures and this bill makes conforming amendments to Section 214.8.

Homeowners' Exemption and Disasters
*Revenue and Taxation Code Sections 218 and 218.05***Existing Law**

Article XIII, Section 3(k) of the California Constitution exempts from property tax the first \$7,000 of the full value of a dwelling when occupied by an owner as his principal residence. This exemption is commonly referred to as the "homeowners' exemption."

Section 218 of the Revenue and Taxation Code details the qualifications for the homeowners' exemption authorized by the constitution. Eligibility is generally continuous once granted. However, if a property is no longer owner-occupied, is vacant or is under construction on the lien date (January 1), the property is not eligible for the exemption for the upcoming tax year. Consequently, a home that previously received a homeowners' exemption, but has suffered total destruction in a disaster as of January 1, is not eligible for the homeowners' exemption for the upcoming tax year.

Special purpose legislation has been enacted in recent years to provide that dwellings destroyed by specific Governor declared disasters will not be disqualified as a "dwelling" or be denied the homeowners' exemption solely on the basis that the dwelling was temporarily damaged or destroyed or was being reconstructed by the owner.

Proposed Law

This bill would add Section 218.05 to the Revenue and Taxation Code to provide that each time there is a Governor declared disaster a property that has been destroyed by the disaster will continue to be eligible to receive the homeowners' exemption. In addition, this bill would codify the current administrative practice as it relates to homes that are partially damaged in any type of disaster. Section 218.05 addresses eligibility for the exemption in three scenarios:

Partial Destruction – Any Disaster. A dwelling that is not occupied on the lien date, because it had been partially destroyed or damaged in a disaster (including Governor declared disasters or any other type of disaster including a stand alone disaster such as a home fire) where the owner's absence is temporary and the owner intends to return to the home when possible to do so, would continue to be eligible to receive the homeowners' exemption. §218.05(b)(1)

Total Destruction – Governor Declared Disaster. A dwelling that has suffered total destruction in a Governor declared disaster would continue to be eligible to receive the homeowners' exemption. §218.05(b)(2)

Total Destruction – Non-Governor Declared Disaster. A dwelling that was previously eligible for the homeowners' exemption but no longer exists on the lien date because it suffered total destruction in a disaster that was not a Governor declared disaster, would not be eligible for homeowners' exemption until the structure is replaced and occupied. §218.05(c)

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Comments

1. **Sponsor and Purpose.** The Board is sponsoring this measure to eliminate the need for special purpose legislation and to expressly codify existing advice relating to a home that suffers partial damage as opposed to total destruction. It also removes the special purpose provisions from Section 218 in order to restore this section of law to the basic fundamentals.
2. **Governor's Signing Message on Special Purpose Legislation.** The Governor included a signing message in last year's AB 18 (Ch. 624, Stats. 2005) requesting that standard purpose legislation be enacted to avoid the need to introduce special purpose legislation each year. The table below lists the special purpose legislation enacted in recent years.

Disaster	Year	Legislation
Shasta County wildfires	2005	Stats. 2005, Ch. 624 (AB 14)
Southern California storms (Kern, Los Angeles, Santa Barbara and Ventura Counties)	2005	Stats. 2005, Ch. 623 (AB 164)
Southern California storms (Orange, Riverside, San Bernardino, and San Diego Counties)	2005	Stats. 2005, Ch. 622 (SB 457)
San Joaquin levee break	2004	Stats. 2004, Ch. 792 (SB 1147)
San Simeon earthquake	2003	Stats. 2004, Ch. 792 (SB 1147)
Southern California wildfires	2003	Stats. 2004, Ch. 792 (SB 1147)
Oakland/Berkeley Hills fire	1992	Stats. 1992, Ch.1180 (SB 1639)

3. **Partial Damage.** Board staff has opined that a temporary absence from a dwelling because of a natural disaster, such as a flood or fire, will not result in the loss of the homeowners' exemption for those properties temporarily vacated for repairs. (See Letter To Assessors 82/50, Question G16) However, when a dwelling has been totally destroyed, staff has opined that because no dwelling exists there is no occupancy or possibility of occupancy on the lien date and the property would not be eligible for the exemption even if the property was under construction. (See Property Tax Annotation 505.0019 "Homeowners' Exemption – Disaster Impact") Referenced documents available at www.boe.ca.gov select "Property Taxes."
4. **Related Bills.** AB 3039 (Houston) also propose to amend Section 218 to make these provisions standard for all Governor declared disasters without the need for special purpose legislation. AB 1798 (Berg) and AB 2735 (Nava) provide special purpose legislation related to this issue for disasters occurring in 2005 and 2006. In addition, AB 1922 (Waters) and AB 2738 (Wyland) propose unrelated amendments to Section 218 to increase the amount of the homeowners' exemption.

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Veterans' Organization Exemption

Revenue and Taxation Code Sections 254.5 and 254.6

Current Law

Revenue and Taxation Code Section 215.1 provides for the exemption of all buildings, and the real property required for the convenient use and occupation of the exempt buildings, owned by a veterans' organization which has been chartered by the Congress of the United States and is organized and operated for charitable purposes, when such premises are used and operated exclusively for charitable purposes by such organization and are not being conducted for profit and no part of the net earnings of the operation inures to the benefit of any private individual or member of the organization. This exemption is popularly known as the veterans' organization exemption and it is jointly administered by the Board and the local county assessor.

Effective with claims filed on or after January 1, 2004, the Board determines whether the organization is eligible to receive the veterans' organization exemption and the county assessor determines whether the use of the property is eligible for the exemption. If the Board determines that an organization is eligible, the Board issues an Organizational Clearance Certificate for the claimant to provide with exemption claim forms filed in any of the 58 counties.

Claims for the veterans' organization exemption must be filed annually with the county assessor in the county in which the organization's property is located. Claims are made on the following form: [BOE 269-AH \(Claim for Veterans' Organization Exemption\)](#). The assessor may not grant a claim unless the organization holds a valid Organizational Clearance Certificate issued by the Board.

Proposed Law

Senate Bill 1062 (Stats. 2003, Ch. 471) amended various statutory provisions relating to both the welfare exemption and the veterans' organization exemption to streamline the administration of these exemptions by eliminating duplicative review functions performed by the assessors and the Board. However, while the modifications were made for both exemptions, two sections of code were not updated to reflect the changes made to the administration of the veterans' organization exemption which this bill would correct.

This bill would amend Sections 254.5 and 254.6 of the Revenue and Taxation Code to expressly provide that the Board staff review claims for organizational clearance certificates for the veterans' organization exemption and issue the certificates to organizations that meet the requirements of Section 215.1.

Comment

Sponsor and Purpose. The Board is sponsoring this provision to correct omission of language in the original exemption streamlining legislation, SB 1062, related to organizations seeking the veterans' organization exemption.

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Section 11 Appeals
*Revenue and Taxation Code Section 1840***Current Law**

Property owned by a local government is generally exempt from property taxation. However, some government owned property is subject to property tax and is assessed by the county assessor of the county where the property is located. Specifically, Article XIII, Section 11 of the California Constitution generally provides that real property owned by a local government that is located outside its boundaries is taxable if taxable when acquired, and specifically prescribes a method for the valuation of taxable government owned lands.

Section 1840 of the Revenue and Taxation Code provides that if the governmental entity that owns the taxable property disagrees with the assessed value of the property determined by the local county assessor, it may file an appeal with the Board of Equalization to review the assessment. In all other instances, property tax appeals of locally assessed property are filed with the local assessment appeals board. These appeals of locally assessed property to the Board are commonly referred to as “Section 11 appeals.”

Section 1840 provides that the final deadline to file a Section 11 appeal is the third Monday in July. Related to state assessee property tax appeals, Section 731 provides that the final deadline is July 20.

Proposed Law

This bill would amend Section 1840 to change the deadline to file a Section 11 appeal with the Board from the third Monday in July to July 20. This would conform the final filing date with that for a state assessee to file a property tax appeal with the Board.

Comments

1. **Sponsor and Purpose.** The Board is sponsoring this legislation to conform the petition filing deadline in Section 1840 for filing property reassessment petitions on publicly-owned property, i.e., Section 11 appeals, with the deadline in Section 731 for filing a petition for a state assessed unitary property reassessment.
2. **Related Legislation.** In 2000, the Board sponsored legislation amending various sections of code to simplify the petition filing process and deadlines for appeals of assessments and allocations of state assessed properties. (SB 2170, Stats. 2000, Ch. 647). As a result, the appeals deadline for state assesses is July 20. The filing deadline for Section 11 appeals with the Board was not modified to conform to the new deadline.

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Grandparent–Grandchild Transfers and the Step Transaction Doctrine
Section 2 of Chapter 48 of the Statutes of 1987

Current Law

Section 63.1 of the Revenue and Taxation Code provides a change in ownership exclusion for transfers between parents and children, and in limited instances, between grandparents and grandchildren. Because the exclusion only applies to transfers of “real property” as opposed to transfers of legal entity interests, the Legislature provided uncodified legislative intent language in Section 2 of the Statutes of Chapter 48 addressing the step transaction doctrine.

Proposed Law

This bill would amend the uncodified legislative intent language to expressly provide that its provisions extend to the grandparent-grandchild exclusion.

Comment

Sponsor and purpose. This provision is sponsored by the author to expressly state that the uncodified language also extends to the property transfers between grandparents and their grandchildren.

COST ESTIMATE

The Board would incur some minor absorbable costs in informing and advising county assessors, public and staff of the law changes and addressing ongoing implementation issues and questions. These costs are estimated to be under \$10,000.

REVENUE ESTIMATE

It is estimated that the revenue loss association with allowing prospective base year value transfers (§69.5) would be \$100,000 per year. The other provisions of this bill have no revenue impact.

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